

# ASSEMBLY, No. 2374

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JANUARY 27, 2020

**Sponsored by:**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**Assemblywoman NANCY J. PINKIN**

**District 18 (Middlesex)**

**SYNOPSIS**

Directs EDA to establish program for public or private financing of certain renewable energy, water, and storm resiliency projects through use by municipalities of voluntary special assessments for certain property owners.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 7/20/2020)**

1 AN ACT concerning the implementation of renewable energy and  
2 energy efficiency systems and water conservation, flood and  
3 hurricane resistance projects, energy storage, and microgrids,  
4 supplementing Titles 34 and 40 of the Revised Statutes, and  
5 amending P.L.2011, c.187 and P.L.1960, c.183.

6

7 **BE IT ENACTED** by the Senate and General Assembly of the State  
8 of New Jersey:

9

10 1. (New section) The Legislature finds and declares it to be the  
11 public policy of this State that:

12 a. Investing in water conservation, stormwater management,  
13 renewable energy, and energy efficiency improvements to real  
14 property is beneficial over time, and flood and hurricane mitigation  
15 projects for existing properties is a critical component in conserving  
16 natural resources and mitigating the effects of floods and  
17 hurricanes, and upfront costs are a barrier to investing in such major  
18 energy, water, and resiliency improvements;

19 b. There are few financing options for such improvements that  
20 combine easy qualification, an attractive interest rate, and a  
21 relatively long repayment term;

22 c. Property accessed clean energy, or “PACE,” lending, in which  
23 repayment is by way of a special assessment on the real property to  
24 which the improvement was made, provides an innovative way for  
25 property owners to finance renewable energy, energy and water  
26 efficiency, and other eligible improvements which, in turn, results  
27 in property owners saving a significant sum in energy costs, helps  
28 communities create local jobs, results in lower mortgage  
29 foreclosures, and stimulates local economies and lower emissions;

30 d. PACE financing will enable New Jersey municipalities to  
31 contribute toward meeting community sustainability, greenhouse  
32 gas emissions reductions, and energy goals, and will provide a  
33 valuable service to the citizens of their communities; and

34 e. PACE financing, and the powers conferred and expenditures  
35 made pursuant to P.L. , c. (C. ) (pending before the  
36 Legislature as this bill), serve a valid public purpose and enactment  
37 of P.L. , c. (C. ) (pending before the Legislature as this bill) is  
38 expressly declared to be in the public interest.

39

40 2. (New section) As used in P.L. , c. (C. ) (pending  
41 before the Legislature as this bill):

42 “Authority” means the New Jersey Economic Development  
43 Authority, and for purposes of P.L. , c. (C. ) (pending before  
44 the Legislature as this bill) shall also include other related State  
45 agencies and or third-party administrators as may be engaged by the

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 authority for the purposes of providing the services authorized by  
2 the rules and regulations adopted pursuant to P.L. , c. (C. )  
3 (pending before the Legislature as this bill).

4 “Energy efficiency improvement” means an improvement to  
5 reduce energy consumption through conservation or a more  
6 efficient use of electricity, natural gas, propane, or other forms of  
7 energy, including, but not limited to: air sealing; installation of  
8 insulation; installation of energy-efficient electrical, heating,  
9 cooling or ventilation systems; building modifications to increase  
10 the use of daylight; replacement of windows; installation of energy  
11 controls or energy recovery systems; installation of electric vehicle  
12 charging equipment; and installation of efficient lighting  
13 equipment.

14 “Flood resistant construction project” means a project that  
15 mitigates the likelihood of substantial flood damage, including but  
16 not limited to the installation of break-away walls and building  
17 elevation alterations.

18 “Hurricane resistant construction project” means an  
19 improvement that brings a component of a structure into  
20 compliance with the standards for a “wind-borne debris region”  
21 adopted pursuant to the “State Uniform Construction Code Act,”  
22 P.L.1975, c.217 (C.52:27D-119 et seq.), or into compliance with a  
23 successor standard under that code.

24 “Microgrid” means a group of interconnected loads and  
25 distributed energy resources within clearly defined electrical  
26 boundaries that acts as a single controllable entity with respect to  
27 the grid and that connects and disconnects from the grid to enable it  
28 to operate when both connected to, or independent of, the grid.

29 “NJPACE program” means the program established by the  
30 authority pursuant to P.L. , c. (C. ) (pending before the  
31 Legislature as this bill) in which a municipality may elect to  
32 participate.

33 “PACE” is an acronym for the term “property assessed clean  
34 energy.”

35 “PACE project” means any category of improvement that the  
36 authority identifies pursuant to rules or regulations, including but  
37 not limited to an energy efficiency improvement, renewable energy  
38 system, energy storage, microgrid, water conservation project,  
39 stormwater management system, zero emission vehicle charging  
40 infrastructure, flood resistant construction project, and hurricane  
41 resistant construction project which is undertaken by the owner of  
42 real property located within a participating municipality and  
43 permanently affixed to such property.

44 “PACE special assessment” means a local improvement  
45 assessment, in accordance with chapter 56 of Title 40 of the  
46 Revised Statutes, imposed by a participating municipality on a  
47 property, with the consent of the owner of such property, as a  
48 means of securing a loan made by a lender to finance a PACE

1 project at such property, payments in respect of which assessment  
2 are collected by the participating municipality and remitted to the  
3 lender.

4 “Participating municipality” means a municipality that has  
5 adopted an ordinance in the form prescribed by the authority  
6 authorizing its participation in the NJPACE program, as well as  
7 taken such other actions as the authority may establish in rules and  
8 regulations adopted pursuant to P.L. , c. (C. ) (pending before  
9 the Legislature as this bill), including designating the authority to  
10 manage, oversee, and administer its participation in the program  
11 implementation or any combination thereof.

12 “Private entity” means a private for-profit or non-profit  
13 corporation, partnership, or any other form of private organization,  
14 including but not limited to a “related competitive business segment  
15 of a public utility holding company,” or a “related competitive  
16 business segment of an electric public utility or gas public utility,”  
17 as those terms are defined in section 3 of P.L.1999, c.23 (C.48:3-  
18 51), so long as the organization is not subject to the jurisdiction of  
19 the Board of Public Utilities.

20 “Project costs” mean the costs associated with a PACE project,  
21 and shall include: the hard costs of purchasing, constructing or  
22 acquiring the project; soft costs, including but not limited to  
23 engineering fees, inspection fees and permits, and costs relating to  
24 the measurement and verification of project savings; and costs of  
25 utilizing the NJPACE program, including but not limited to  
26 program fees, closing costs, and interest and other financing  
27 charges.

28 “Property” means an industrial, agricultural, or commercial  
29 property, or a residential property with five or more dwelling units,  
30 within a municipality upon which a PACE special assessment is  
31 imposed at the request of a property owner in connection with a  
32 PACE project.

33 “Property owner” means the owner of a property within a  
34 municipality who requests that a PACE special assessment be  
35 imposed on the property in connection with a PACE project.

36 “Renewable energy system” means an improvement in which the  
37 electrical, mechanical, or thermal energy is produced from a method  
38 that uses one or more of the following fuels or energy sources:  
39 hydrogen, solar energy, geothermal energy, bio-mass, or wind  
40 energy, together with such other fuels and energy sources that the  
41 authority, after consultation with the Board of Public Utilities, may  
42 determine pursuant to rules and regulations adopted pursuant to  
43 P.L. , c. (C. ) (pending before the Legislature as this bill).

44 “Solar renewable energy certificate” means the same as defined  
45 in section 3 of P.L.1999, c.23 (C.48:3-51).

46 “Stormwater management system” means the same as defined in  
47 section 3 of P.L.2019, c.42 (C.40A:26B-3).

1 “Water conservation project” means an improvement that  
2 reduces water consumption, increases the efficiency of water use, or  
3 reduces water loss.

4  
5 3. (New section) a. The authority shall establish a NJPACE  
6 program to facilitate the financing of PACE projects that fulfills the  
7 requirements enumerated herein, as well as those rules, regulations,  
8 guidelines, and other requirements established by the authority as  
9 part of the administration of the program. The NJPACE program  
10 shall consist of, among other things, the implementation of PACE  
11 projects to be undertaken by property owners as local improvements  
12 and the provision by ordinance for a PACE special assessment to be  
13 imposed on properties within the municipality, if the owner of a  
14 property requests the PACE special assessment in order to  
15 undertake and finance a PACE project. PACE projects on an  
16 individual property subject to the same PACE special assessment  
17 agreement collectively shall constitute a separate local improvement  
18 and shall be assessed separately to the property owner benefitted  
19 thereby.

20 b. The authority may enter into a memorandum of agreement  
21 with one or more State government agencies or instrumentalities  
22 whereby any of the powers the authority may exercise or  
23 responsibilities it must fulfill pursuant to P.L. , c. (C. ) (pending  
24 before the Legislature as this bill) may be exercised or fulfilled, as  
25 the case may be, by such agency or instrumentality, and any fund  
26 that may be used for administrative expenses by the authority may  
27 be used by such agency or instrumentality in exercising such  
28 powers or fulfilling such responsibilities.

29 c. The authority may also hire and set the compensation of one  
30 or more private parties, whether for-profit or not-for-profit, to assist  
31 the authority in its administration of the program pursuant to a  
32 competitive bidding process in accordance with the provisions of  
33 P.L. , c. (C. ) (pending before the Legislature as this bill).  
34 The authority may delegate to such one or more private parties such  
35 matters as may be determined by rules and regulations adopted by  
36 the authority, provided that under no circumstances may the  
37 authority delegate its responsibility for general oversight of the  
38 NJPACE program.

39 d. The authority may establish a loan loss reserve, issue  
40 guarantees, or both, to mitigate the repayment risk assumed by  
41 lenders providing PACE loans, in order to improve the availability  
42 and financial terms of such financing for PACE projects for  
43 property owners.

44 e. The authority may purchase PACE loans from lenders and  
45 hold them until maturity, or resell them to other private parties,  
46 either individually or aggregated in securitized form.

47 f. Pursuant to the purpose and objectives outlined in P.L. ,  
48 c. (C. ) (pending before the Legislature as this bill), and with

1 respect to the responsibilities of administering the NJPACE  
2 program, the authority shall issue rules and regulations and  
3 guidelines further establishing the terms and conditions under  
4 which financing may be provided under the program, in  
5 consultation with the Board of Public Utilities and the Division of  
6 Local Government Services in the Department of Community  
7 Affairs.

8 g. The authority shall determine compliance with the  
9 underwriting criteria and other requirements set forth in P.L. , c.  
10 (C. ) (pending before the Legislature as this bill), and the rules,  
11 regulations, and guidelines adopted pursuant thereto, and shall  
12 include an accounting of the NJPACE Program in the annual report  
13 required each year pursuant to subsection a. of section 4 of P.L. ,  
14 c. (C. ) (pending before the Legislature as this bill).

15

16 4. (New section) a. Eighteen months after the date of enactment  
17 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
18 and annually thereafter, the authority shall prepare and submit to  
19 the Governor and, pursuant to section 2 of P.L.1991, c.164  
20 (C.52:14-19.1), to the Legislature, a report describing the  
21 implementation and operation of the NJPACE program, including  
22 program receipts, disbursements, and earnings. The annual report  
23 may also identify and recommend any legislative changes to the law  
24 authorizing the NJPACE program that may be necessary.

25 b. No later than five years after the date of enactment of P.L. ,  
26 c. (C. ) (pending before the Legislature as this bill), the  
27 authority shall prepare and submit to the Governor and, pursuant to  
28 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a  
29 report that reviews and assesses implementation of the NJPACE  
30 program. The report shall evaluate the NJPACE program, and  
31 review foreclosure rates, cost-effectiveness of PACE projects,  
32 reasonableness of costs to property owners, and any other factors  
33 the authority deems appropriate. The report shall also identify and  
34 recommend any legislative changes to the law authorizing the  
35 NJPACE program that may be necessary.

36 c. The authority shall post all reports prepared pursuant to this  
37 subsection on its Internet website.

38

39 5. (New section) a. Notwithstanding the provisions of the  
40 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
41 seq.), to the contrary, the authority may adopt immediately upon  
42 filing with the Office of Administrative Law such rules and  
43 regulations as the authority determines to be necessary to effectuate  
44 the purposes of P.L. , c. (C. ) (pending before the Legislature  
45 as this bill), which rules and regulations shall be effective for a  
46 period not exceeding 360 days following the effective date of  
47 P.L. , c. (C. ) (pending before the Legislature as this bill).  
48 Such rules and regulations shall, thereafter, be amended, adopted,

1 or readopted by the authority in accordance with the  
2 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et  
3 seq.).

4 The rules and regulations shall include, but not be limited to:

5 (1) the necessary application requirements and procedures for a  
6 property owner seeking PACE financing and a lender seeking to  
7 make PACE loans;

8 (2) the necessary qualifications and requirements for a proposed  
9 PACE project, including the qualifications and requirements for  
10 projects other than energy efficiency improvements and renewable  
11 energy systems, which may include, without limitation, resiliency-  
12 related projects, water efficiency improvements, and energy  
13 storage, microgrid, and combined heat and power projects;

14 (3) the underwriting criteria to be applied in determining the  
15 eligibility of properties and their owners to participate in the  
16 NJPACE program;

17 (4) a requirement that all existing lien holders on a property be  
18 given notice prior to a PACE special assessment and lien being filed  
19 in connection with that property, and that all property owners  
20 seeking a PACE loan receive consent of the existing mortgage  
21 holders on the property prior to the authority’s approval of the  
22 PACE loan;

23 (5) a requirement that term of the PACE loan be no longer than  
24 the forecast life of the improvements; and

25 (6) forms of agreement and other documents necessary for the  
26 efficient administration of the NJPACE program.

27 b. Prior to adoption of the rules and regulations pursuant to  
28 subsection a. of this section, the authority shall organize and hold a  
29 public stakeholder meeting regarding the rules and regulations, after  
30 providing, by publication of a notice not less than 20 days prior to  
31 such meeting including the time, date, and place thereof.

32 c. The NJPACE program shall not be operational and available  
33 for the participation of municipalities and property owners until  
34 rules and regulations, and program guidelines have initially been  
35 adopted by the authority pursuant to subsection a. of this section.

36

37 6. (New section) a. Notwithstanding any provision of chapter  
38 56 of Title 40 of the Revised Statutes (R.S.40:56-1 et seq.), or any  
39 other law to the contrary, a municipality shall follow the following  
40 process to establish and implement a NJPACE program pursuant to  
41 P.L. , c. (C. ) (pending before the Legislature as this bill):

42 (1) A municipal ordinance shall establish a form of PACE  
43 special assessment agreement to be entered into with NJPACE  
44 program participants, and identify whether the NJPACE program  
45 will be implemented, financed, and managed by the municipality,  
46 the county, or by a county improvement authority, or by another  
47 public entity or private entity.

1 (2) The municipal ordinance required by the authority to be  
2 adopted by a municipality shall prescribe criteria for participation in  
3 the NJPACE program at the time of the initial financing, which  
4 criteria shall include, at a minimum, the following:

5 (a) that PACE financing recipients are either the legal owners of  
6 the underlying property or provide the written consent of the legal  
7 owners of the underlying property, are current on mortgage and  
8 property tax payments with respect to the underlying property, and  
9 are not the subject of a default or in bankruptcy proceedings;

10 (b) an appropriate ratio of the assessment to the value of the  
11 property, but in no circumstance may the combination of a PACE  
12 financing and the existing loan-to-value ratio on a property exceed  
13 90 percent of the appraised value of the property including the  
14 value of the PACE project; and

15 (c) require that an appraisal be conducted, if one is not  
16 conducted by the lender for the PACE project.

17 The ordinance may establish standards for the maximum amount,  
18 or duration of PACE special assessments, or both, but in no event  
19 shall the maximum duration of a PACE special assessment exceed  
20 30 years.

21 (3) The municipal ordinance shall require that a disclosure form  
22 summarizing PACE financing risks provided by the NJPACE  
23 program administrator and the lender be signed by the owner of  
24 each property. The disclosure form shall include, but need not be  
25 limited to, the following information:

26 (a) risks from incorrect or defective improvement design or  
27 construction of the PACE project;

28 (b) risk of foreclosure for failure to pay the special assessment;

29 (c) imposition of charges or other enforcement for delinquent  
30 PACE special assessment payments in the same manner as  
31 delinquent real estate taxes;

32 (d) lack of guarantee of energy savings from the PACE project;

33 (e) likelihood that completed PACE projects may require  
34 ongoing maintenance to meet performance targets;

35 (f) probability that changes in property occupancy or energy  
36 costs may affect energy savings expected from the project;

37 (g) lack of guarantee by the NJPACE program or NJPACE  
38 program administrator of availability of local, State, or federal tax  
39 credits or other incentives; and

40 (h) amount of additional fees for actual municipal costs that will  
41 be added to the PACE special assessment.

42 (4) The municipal ordinance shall also require that the NJPACE  
43 program include the following consumer protection provisions:

44 (a) the authority of the property owner to cancel the PACE  
45 contract within three business days of signing it;

46 (b) a requirement to provide information to the property owner  
47 on the total cost of the PACE project for the life of the agreement  
48 including interest or fees to be paid, total number of payments,



1 payment frequency, amount of each payment, and warranty or  
2 maintenance obligations; and

3 (c) a prohibition restricting specific monetary or percentage  
4 estimates on property value changes as a result of the PACE  
5 project.

6 b. The amount of a PACE special assessment shall be a specific  
7 amount, not to exceed the project costs of the PACE project. The  
8 specific amount of a PACE special assessment, which shall be  
9 consented to by the property owner by its execution of a PACE  
10 special assessment agreement in the form promulgated by the  
11 authority, shall be deemed the benefit conferred with respect to the  
12 property and shall be in lieu of the amount being determined by any  
13 other procedures set forth in Title 40 of the Revised Statutes  
14 otherwise applicable to determining the actual benefit conferred on  
15 the property. No other confirmation or determination of the amount  
16 of the PACE special assessment, including, but not limited to the  
17 procedure set forth at R.S.40:56-30, shall be required.

18 c. Subject to the written consent of existing mortgage holders,  
19 the form of which shall be determined by the authority in its rules  
20 regulations, or guidelines, a PACE special assessment shall be a  
21 single, continuous first lien on the property against which the PACE  
22 special assessment agreement is recorded, on and after the date of  
23 recordation of the agreement. Upon recordation of the PACE  
24 special assessment agreement in the land records of the county in  
25 which the property is located, the lien thereof shall be perfected for  
26 all purposes in accordance with law and the lien shall be a  
27 continuous first lien upon the real estate described in the  
28 assessment, paramount to all prior or subsequent alienations and  
29 descents of such real estate or encumbrances thereon, except  
30 subsequent taxes or assessments, without any additional notice,  
31 recording, filing, continuation filing, or action, until payment in full  
32 of the PACE special assessment, notwithstanding any mistake in the  
33 name or names of any owner or owners, or any omission to name  
34 any owner or owners who are unknown, and notwithstanding any  
35 lack of form therein, or in any other proceeding which does not  
36 impair the substantial rights of the owner or owners or other person  
37 or persons having a lien upon or interest in any such real estate.  
38 Any confirmation of the amount of the assessment by the governing  
39 body or by the court shall be considered as determining the amount  
40 of the existing lien and not as establishing the lien. All assessments  
41 shall be presumed to have been regularly assessed and confirmed  
42 and every assessment or proceeding preliminary thereto shall be  
43 presumed to have been regularly made or conducted until the  
44 contrary be shown.

45 A PACE special assessment shall not be considered an  
46 "equivalent consensual security interest" for the purposes of the  
47 "New Jersey Residential Mortgage Lending Act," P.L.2009, c.53  
48 (C.17:11C-51 et seq.). A PACE special assessment shall be treated

1 as a municipal lien rather than a contractual lien for all purposes of  
2 law.

3 d. Funds to implement a PACE project may be disbursed to the  
4 property owner at execution of the PACE special assessment  
5 agreement, or may be disbursed in installments over time. Such  
6 funds shall not constitute public funds, and shall not be subject to  
7 the laws governing public funds, including but not limited to laws  
8 regarding the receipt, expenditure, deposit, investment, or  
9 appropriation of the same. A PACE project shall not be considered  
10 a “facility” or “public facility” within the meaning of the “county  
11 improvement authorities law,” P.L.1960, c.183 (C.40:37A-44 et  
12 seq.). Payments of PACE special assessments shall commence as  
13 set forth in the PACE special assessment agreement. To the extent  
14 that upon completion of the PACE project, funds remain which  
15 have not been disbursed to the property owner for a PACE project,  
16 those funds on hand shall be used to reduce the amount of the  
17 PACE special assessment.

18 e. Except as provided in subsection g. of this section, if any  
19 payment of a PACE special assessment is not made within 10 days  
20 after the time when that payment shall have become due, or later,  
21 consistent with any grace period provided or extended by a  
22 municipality for the payment of property tax bills, interest thereon  
23 shall be imposed at the same rate as may be imposed upon unpaid  
24 property taxes in the municipality, and collected and enforced in the  
25 same manner as unpaid property taxes, including by accelerated tax  
26 sale if the municipality shall enforce collection of its unpaid  
27 property taxes through accelerated tax sale. However, the balance  
28 due on a PACE special assessment shall not be subject to  
29 acceleration in the event of a default in payment. Notwithstanding  
30 any other provision of law, in the event that any lien on the property  
31 shall be exposed to tax sale, pursuant to the “tax sale law,”  
32 R.S.54:5-1 et seq., and any such lien is struck off and sold to the  
33 municipality, the PACE special assessment shall survive any  
34 subsequent action to foreclose the right of redemption and continue  
35 as a first lien upon the real estate described in the assessment,  
36 paramount to all prior or subsequent alienations and descents of  
37 such real estate or encumbrances thereon, except subsequent taxes  
38 or assessments, and provided that, notwithstanding the obligations  
39 of a municipality pursuant to section 1 of P.L.1942, c.54 (C.54:5-  
40 53.1), while the municipality holds such lien or owns such property,  
41 the municipality shall not be responsible for or required to make  
42 any payment in furtherance of or to satisfy any such PACE special  
43 assessment.

44 f. PACE special assessments may be assigned directly by the  
45 municipality, and any assignee thereof, as security for the  
46 repayment of any obligations of a property owner to a lender that  
47 has provided a PACE loan, to such lender, or any assignee thereof.

1 Notwithstanding any law to the contrary, the assignment shall be  
2 an absolute assignment of all of the municipality's right, title, and  
3 interest in and to the PACE special assessment, along with the  
4 rights and remedies provided to the municipality under the PACE  
5 special assessment agreement, including, but not limited to, the  
6 right to direct the collection of payments due. PACE special  
7 assessments assigned as provided hereunder shall not be included in  
8 the general funds of the municipality, or be subject to any laws  
9 regarding the receipt, deposit, investment, or appropriation of  
10 public funds, and shall retain such status notwithstanding  
11 enforcement of the assessment by the municipality or assignee as  
12 provided herein. In the case of a municipality which is otherwise  
13 subject to tax or revenue sharing pursuant to law and which assigns  
14 PACE special assessments as set forth in this section, such PACE  
15 special assessments shall not be considered part of the tax or  
16 revenue sharing formula or calculation of municipal revenues for  
17 the purpose of determining whether that municipality is obligated to  
18 make payment to, or receive a credit from, any tax sharing or  
19 revenue sharing pool.

20 g. Notwithstanding any other law to the contrary, in any  
21 foreclosure action due to nonpayment or late payment of a PACE  
22 special assessment for property in the NJPACE program, service of  
23 the complaint on all parties shall be made by personal service,  
24 hand-delivered by the sheriff or personal process server, and the  
25 procedure for obtaining a final judgment shall conform to the  
26 procedures and requirements of the in personam foreclosure  
27 process.

28

29 7. Section 1 of P.L.2011, c.187 (C.40:56-1.4) is amended to read  
30 as follows:

31 1. a. Upon application to and approval by the Director of  
32 Local Government Services in the Department of Community  
33 Affairs, the governing body of a municipality may undertake the  
34 financing of the purchase and installation of renewable energy  
35 systems and energy efficiency improvements by property owners as  
36 a local improvement and may provide by ordinance for a "clean  
37 energy special assessment" to be imposed on a property within the  
38 municipality, if the owner of the property requests the assessment in  
39 order to install such systems or improvements. Each improvement  
40 on an individual property shall constitute a separate local  
41 improvement and shall be assessed separately to the property owner  
42 benefitted thereby. The clean energy special assessment shall be  
43 payable in quarterly installments. The terms of the clean energy  
44 special assessment shall be in accordance with the terms of the  
45 financing provided by the municipality pursuant to section 2 of  
46 P.L.2011, c.187 (C.40:56-13.1).

47 b. Notwithstanding the provisions of subsection a. of this section  
48 to the contrary, the Director of Local Government Services in the

1 Department of Community Affairs shall not approve an application  
2 and a municipality shall not undertake the financing of the purchase  
3 and installation of renewable energy systems and energy efficiency  
4 improvements by property owners as a local improvement pursuant  
5 to the provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) after the  
6 date of enactment of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the  
7 Legislature as this bill).

8 (cf: P.L.2011, c.187, s.1)

9

10 8. Section 2 of P.L.2011, c.187 (C.40:56-13.1) is amended to  
11 read as follows:

12 2. a. (1) Upon application to and approval by the Director of  
13 Local Government Services in the Department of Community  
14 Affairs, a municipality may adopt an ordinance to establish a  
15 program to finance the purchase and installation of renewable  
16 energy systems and energy efficiency improvements by property  
17 owners. The governing body may apply to a county improvement  
18 authority that issues bonds pursuant to paragraph (2) of subsection  
19 (j) of section 12 of P.L.1960, c.183 (C.40:37A-55), or may issue  
20 bonds to finance the program pursuant to section 3 of P.L.2011,  
21 c.187 (C.40:56-13.2). Funds for the purchase and installation of  
22 renewable energy systems and energy efficiency improvements  
23 shall be loaned to property owners in exchange for a clean energy  
24 special assessment on the property pursuant to section 1 of  
25 P.L.2011, c.187 (C.40:56-1.4), to be paid quarterly. In the case of  
26 financing provided by bonds issued by a county improvement  
27 authority, the clean energy special assessment shall be used to repay  
28 the bonds. In the case of financing provided by the municipality  
29 through the issuance of municipal bonds, the clean energy special  
30 assessment shall be used to repay the bonds. A property owner who  
31 purchases and installs a renewable energy system under the  
32 program may also assign any solar renewable energy certificates or  
33 other renewable energy credits that accrue to the property owner  
34 from the operation of the system to the municipality or the county  
35 improvement authority to repay the loan for the system. The  
36 Director of Local Government Services in the Department of  
37 Community Affairs shall coordinate efforts with the Board of  
38 Public Utilities to ensure that the amount of financing made  
39 available by local programs authorized pursuant to this act is in  
40 accordance with limits set from time to time by the Board of Public  
41 Utilities in order to ensure that local programs further the goals of  
42 the Office of Clean Energy in the Board of Public Utilities.

43 (2) Notwithstanding the provisions of paragraph (1) of this  
44 subsection to the contrary, the Director of Local Government  
45 Services in the Department of Community Affairs shall not approve  
46 an application and a municipality shall not adopt an ordinance to  
47 establish a program to finance the purchase and installation of  
48 renewable energy systems and energy efficiency improvements by

1 property owners pursuant to the provisions of P.L.2011, c.187  
2 (C.40:56-1.4 et al.) after the date of enactment of P.L. \_\_\_\_\_,  
3 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill).

4 b. As used in this section, “solar renewable energy certificate”  
5 shall have the same meaning as set forth in section 3 of P.L.1999,  
6 c.23 (C.48:3-51).  
7 (cf: P.L.2011, c.187, s.2)

8  
9 9. Section 3 of P.L.2011, c.187 (C.40:56-13.2) is amended to  
10 read as follows:

11 3. a. Upon application to and approval by the Director of Local  
12 Government Services in the Department of Community Affairs, the  
13 governing body of a municipality may establish the amounts of  
14 money to be expended by the municipality for the improvements  
15 authorized in sections 1 and 2 of P.L.2011, c.187 (C.40:56-1.4 and  
16 C.40:56-13.1). Any amount so appropriated may be raised by the  
17 issuance of clean energy special assessment bonds by the  
18 municipality. In making the appropriation, the governing body may  
19 designate the particular projects to be financed to which the moneys  
20 shall be applied.

21 b. Clean energy special assessments and bonds issued to finance  
22 them shall be issued and shall be generally subject to R.S.40:56-21  
23 et seq., as the director shall determine to be applicable.

24 c. The director is authorized and empowered to take such action  
25 as deemed necessary and consistent with the intent of this act to  
26 implement its provisions.

27 d. Notwithstanding the provisions of this section to the contrary,  
28 the Director of Local Government Services in the Department of  
29 Community Affairs shall not approve an application pursuant to  
30 subsection a. of this section after the date of enactment of P.L. \_\_\_\_\_,  
31 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill).  
32 (cf: P.L.2011, c.187, s.3)

33  
34 10. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to  
35 read as follows:

36 11. The purposes of every authority shall be (a) provision within  
37 the county or any beneficiary county of public facilities for use by  
38 the State, the county or any beneficiary county, or any municipality  
39 in any such county, or any two or more or any subdivisions,  
40 departments, agencies or instrumentalities of any of the foregoing  
41 for any of their respective governmental purposes, (b) provision  
42 within the county or any beneficiary county of public facilities for  
43 use as convention halls, or the rehabilitation, improvement or  
44 enlargement of any convention hall, including appropriate and  
45 desirable appurtenances located within the convention hall or near,  
46 adjacent to or over it within boundaries determined at the discretion  
47 of the authority, including but not limited to office facilities,  
48 commercial facilities, community service facilities, parking

1 facilities, hotel facilities and other facilities for the accommodation  
2 and entertainment of tourists and visitors, (c) provision within the  
3 county or any beneficiary county of structures, franchises,  
4 equipment and facilities for operation of public transportation or for  
5 terminal purposes, including development and improvement of port  
6 terminal structures, facilities and equipment for public use in  
7 counties in, along or through which a navigable river flows, (d)  
8 provision within the county or any beneficiary county of structures  
9 or other facilities used or operated by the authority or any  
10 governmental unit in connection with, or relative to development  
11 and improvement of, aviation for military or civilian purposes,  
12 including research in connection therewith, and including structures  
13 or other facilities for the accommodation of passengers, (e)  
14 provision within the county or any beneficiary county of a public  
15 facility for a combination of governmental and nongovernmental  
16 uses; provided that not more than 50 **[%]** percent of the usable  
17 space in any such facility shall be made available for  
18 nongovernmental use under a lease or other agreement by or with  
19 the authority, (f) acquisition of any real property within the county  
20 or any beneficiary county, with or without the improvements  
21 thereof or thereon or personal property appurtenant or incidental  
22 thereto, from the United States of America or any department,  
23 agency or instrumentality heretofore or hereafter created,  
24 designated or established by or for it, and the clearance,  
25 development or redevelopment, improvement, use or disposition of  
26 the acquired lands and premises in accordance with the provisions  
27 and for the purposes stated in **[this act]** the “county improvement  
28 authorities law,” P.L.1960, c.183 (C.40:37A-44 et seq.), including  
29 the construction, reconstruction, demolition, rehabilitation,  
30 conversion, repair or alteration of improvements on or to said lands  
31 and premises, and structures and facilities incidental to the  
32 foregoing as may be necessary, convenient or desirable, (g)  
33 acquisition, construction, maintenance and operation of garbage and  
34 solid waste disposal systems for the purpose of collecting and  
35 disposing of garbage, solid waste or refuse matter, whether owned  
36 or operated by any person, the authority or any other governmental  
37 unit, within or without the county or any beneficiary county, (h) the  
38 improvement, furtherance and promotion of the tourist industries  
39 and recreational attractiveness of the county or any beneficiary  
40 county through the planning, acquisition, construction,  
41 improvement, maintenance and operation of facilities for the  
42 recreation and entertainment of the public, which facilities may  
43 include, without being limited to, a center for the performing and  
44 visual arts, (i) provision of loans and other financial assistance and  
45 technical assistance for the construction, reconstruction, demolition,  
46 rehabilitation, conversion, repair or alteration of buildings or  
47 facilities designed to provide decent, safe and sanitary dwelling  
48 units for persons of low and moderate income in need of housing,

1 including the acquisition of land, equipment or other real or  
2 personal properties which the authority determines to be necessary,  
3 convenient or desirable appurtenances, all in accordance with the  
4 provisions of **【this act】** the “county improvement authorities law,”  
5 P.L.1960, c.183 (C.40:37A-44 et seq.), as amended and  
6 supplemented, (j) planning, initiating and carrying out  
7 redevelopment projects for the elimination, and for the prevention  
8 of the development or spread of blighted, deteriorated or  
9 deteriorating areas and the disposition, for uses in accordance with  
10 the objectives of the redevelopment project, of any property or part  
11 thereof acquired in the area of such project, (k) any combination or  
12 combinations of the foregoing or following, and (l) subject to the  
13 prior approval of the Local Finance Board, the planning, design,  
14 acquisition, construction, improvement, renovation, installation,  
15 maintenance and operation of facilities or any other type of real or  
16 personal property within the county for a corporation or other  
17 person organized for any one or more of the purposes described in  
18 subsection a. of N.J.S.15A:2-1 except those facilities or any other  
19 type of real or personal property which can be financed pursuant to  
20 the provisions of P.L.1972, c.29 (C.26:2I-1 et seq.) as amended. A  
21 county improvement authority shall also have as its purpose the  
22 pooling of loans for any local governmental units within the county  
23 or any beneficiary county that are refunding bonds in order to  
24 achieve more favorable interest rates and terms for those local  
25 governmental units. A county improvement authority shall also  
26 have as its purpose the implementation, management, oversight, and  
27 administration of a NJPACE program, as defined in section 2 of  
28 P.L. , c. (C. ) (pending before the Legislature as this bill).  
29 (cf: P.L.2002, c.42, s.8)

30

31 11. This act shall take effect immediately, except that the  
32 NJPACE program shall be inoperable until the adoption of the rules  
33 and regulations required pursuant to subsection a. of section 5 of  
34 this act.

35

36

37

## STATEMENT

38

39 This bill would require the Economic Development Authority  
40 (EDA) to establish a “NJPACE program.”

41 “PACE” is an acronym for the term “property assessed clean  
42 energy.” As defined in the bill, “PACE project” means any  
43 category of improvement that the EDA identifies pursuant to rules  
44 or regulations, including but not limited to an energy efficiency  
45 improvement, renewable energy system, energy storage, microgrid,  
46 water conservation project, stormwater management system, zero  
47 emission vehicle charging infrastructure, flood resistant  
48 construction project, and hurricane resistant construction project

1 which is undertaken by the owner of real property located within a  
2 participating municipality and permanently affixed to such  
3 property.

4 The NJPACE program, to be established by the EDA pursuant to  
5 this bill, would consist of, among other things, the implementation  
6 of PACE projects to be undertaken by property owners as local  
7 improvements and the provision by municipal ordinance for a  
8 PACE special assessment to be imposed on properties within the  
9 municipality, if the owner of a property requests the PACE special  
10 assessment in order to undertake and finance a PACE project. The  
11 special assessment would be used to repay the loan for the PACE  
12 project and would constitute a single, continuous first lien on the  
13 property. It would be treated as a municipal lien for all purposes of  
14 law. PACE projects on an individual property subject to the same  
15 PACE special assessment agreement collectively would constitute a  
16 separate local improvement and would be assessed separately to the  
17 property owner benefitted thereby.

18 The bill provides that the EDA may enter into a memorandum of  
19 agreement with one or more State government agencies or  
20 instrumentalities authorizing the agency or instrumentality to  
21 exercise the EDA's powers or responsibilities under the bill. The  
22 bill also provides that the EDA may hire and set the compensation  
23 for one or more private parties, whether for-profit or not-for-profit,  
24 to assist in the administration of the NJPACE program pursuant to a  
25 competitive bidding process. However, the EDA could not delegate  
26 its responsibility for general oversight of the NJPACE program.

27 The bill provides that the EDA may establish a loan loss reserve,  
28 issue guarantees, or both, to mitigate the repayment risk assumed by  
29 lenders providing PACE loans, in order to improve the availability  
30 and financial terms of financing for PACE projects for property  
31 owners. In addition, the EDA may purchase PACE loans from  
32 lenders and hold them until maturity, or resell them to other private  
33 parties, either individually or aggregated in securitized form.

34 The bill requires the EDA to adopt rules and regulations and  
35 guidelines further establishing the terms and conditions under  
36 which financing may be provided under the program, in  
37 consultation with the Board of Public Utilities and the Division of  
38 Local Government Services in the Department of Community  
39 Affairs.

40 The bill requires the EDA to adopt rules and regulations to  
41 implement the NJPACE program, which would include, but not be  
42 limited to:

43 (1) the application requirements and procedures for a property  
44 owner seeking PACE financing and a lender seeking to make PACE  
45 loans;

46 (2) the qualifications and requirements for a proposed PACE  
47 project, including the qualifications and requirements for projects  
48 other than energy efficiency improvements and renewable energy



1 systems, which may include, without limitation, resiliency-related  
2 projects, water efficiency improvements, and energy storage,  
3 microgrid, and combined heat and power projects;

4 (3) the underwriting criteria to be applied in determining the  
5 eligibility of properties and their owners to participate in the  
6 NJPACE program;

7 (4) a requirement that all existing lien holders on a property be  
8 given notice prior to a PACE special assessment and lien being filed  
9 in connection with that property, and that all property owners  
10 seeking a PACE loan receive consent of the existing mortgage  
11 holders on the property prior to the EDA's approval of the PACE  
12 loan;

13 (5) a requirement that term of the PACE loan be no longer than  
14 the forecast life of the improvements; and

15 (6) forms of agreement and other documents necessary for the  
16 efficient administration of the NJPACE program.

17 The bill would require the EDA, 18 months after the date the bill  
18 is enacted into law, and annually thereafter, to prepare and submit a  
19 report to the Governor and the Legislature describing the  
20 implementation and operation of the NJPACE program, including  
21 program receipts, disbursements, and earnings. In addition, the bill  
22 requires the EDA, no later than five years after the date the bill is  
23 enacted into law, to prepare and submit a report to the Governor and  
24 the Legislature, that reviews and assesses implementation of the  
25 NJPACE program. This report would evaluate the NJPACE  
26 program, and review foreclosure rates, cost-effectiveness of PACE  
27 projects, reasonableness of costs to property owners, and any other  
28 factors the EDA deems appropriate, and also identify and  
29 recommend any legislative changes to the law authorizing the  
30 NJPACE program that may be necessary.

31 Further, section 6 of the bill establishes the process for a  
32 municipality to establish and implement a NJPACE program  
33 pursuant to the bill and sets forth the requirements to be included in  
34 a municipal ordinance. The municipal ordinance would, at a  
35 minimum:

36 (1) require that PACE financing recipients are either the legal  
37 owners of the underlying property or provide the written consent of  
38 the legal owners of the underlying property, are current on  
39 mortgage and property tax payments with respect to the underlying  
40 property, and are not the subject of a default or in bankruptcy  
41 proceedings;

42 (2) establish an appropriate ratio of the assessment to the value  
43 of the property, but in no circumstance may the combination of a  
44 PACE financing and the existing loan-to-value ratio on a property  
45 exceed 90 percent of the appraised value of the property including  
46 the value of the PACE project;

1 (3) require that a disclosure form summarizing PACE financing  
2 risks provided by the NJPACE program administrator and the  
3 lender be signed by the owner of each property; and

4 (4) include certain specified consumer protection provisions.

5 The municipal ordinance may establish standards for the  
6 maximum amount, or duration of a PACE special assessment, or  
7 both, but in no event would the maximum duration of a PACE  
8 special assessment exceed 30 years. The amount of a PACE special  
9 assessment would be a specific amount, not to exceed the project  
10 costs of the PACE project.

11 A PACE special assessment would be a single, continuous first  
12 lien on the property against which the PACE special assessment  
13 agreement is recorded, on and after the date of recordation of the  
14 agreement. In addition, a PACE special assessment would be  
15 treated as a municipal lien rather than a contractual lien for all  
16 purposes of law.

17 Under current law, P.L.2011, c.187 (C.40:56-1.4 et al.), the  
18 governing body of a municipality, upon application to and approval  
19 by the Director of the Division of Local Government Services in the  
20 Department of Community Affairs, may undertake the financing of  
21 the purchase and installation of renewable energy systems and  
22 energy efficiency improvements made by property owners. By  
23 ordinance, the municipality may provide for a “clean energy special  
24 assessment” to be imposed on those properties when the property  
25 owner has requested the assessment in exchange for receiving  
26 assistance with the initial financing. Under current law, the only  
27 projects eligible for this program are installations of renewable  
28 energy systems and energy efficiency improvements. This bill  
29 would prohibit the Director of the Division of Local Government  
30 Services from approving applications from municipalities pursuant  
31 to P.L.2011, c.187 after the date of enactment of this bill into law.

32 Lastly, the bill would amend the “county improvement  
33 authorities law” to add to the purposes of a county improvement  
34 authority the implementation, management, oversight, and  
35 administration of a NJPACE program pursuant to the bill.